

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Chris Lee Burmeister,
individually, and doing business as,
Burmeister Siding

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for a hearing before Administrative Law Judge Eric L. Lipman on August 30, 2007, at the Minneapolis offices of the Office of Administrative Hearings.

Christopher M. Kaisershot, Assistant Attorney General, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota, 55101-2130, appeared on behalf of the Minnesota Department of Labor and Industry (Department). There was no appearance by, or on behalf of, Chris Lee Burmeister or Burmeister Siding (Respondent). Following a post-hearing submission from the Department on August 30, 2007, the hearing record closed.

STATEMENT OF THE ISSUES

1. Whether the Respondent engaged in unlicensed residential building contractor or residential remodeler activities in violation of Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.91, subds. (1)(5) and (4) (2006)?
2. Whether the Respondent defied the February 21, 2003 Consent Cease and Desist Order in violation of Minn. Stat. § 326.91, subds. (1)(5) and 4 (2006)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On July 23, 2007, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to the following addresses: 405 North 5th Street, Apartment 403, Mankato, MN 56001.¹ The Notice of and Order for

¹ See, Affidavit of Ann Kirlin (July 23, 2007).

Hearing indicated that a Prehearing Conference would be held in this matter on August 30, 2007.²

2. The Notice and Order for Hearing in this matter includes the following statements:

Respondent's failure to appear at the prehearing conference or hearing may result in a finding that Respondent is in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that Respondent may be subject to discipline, including civil penalties.

....

Under Minn. Stat. § 45.027, subd. 6 (2006), Respondent may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondent(s) violated any law, rule or order related to the duties and responsibilities entrusted to the Commissioner.³

3. No one appeared at the August 30, 2007 hearing on behalf of Respondent. No prehearing request was made for a continuance, nor was any communication received by the undersigned from Chris Lee Burmeister or Burmeister Siding.

4. The Amended Statement of Charges alleges that:

- (a) Respondent is not licensed in any capacity by the Department.
- (b) On or about February 21, 2003, Respondent executed a Consent Cease and Desist Order ("Order"), which required him to stop working as a residential building contractor, remodeler, or roofer. That Order has not been vacated or otherwise modified or withdrawn.
- (c) In the May 29 - June 4, 2007 *Home Magazine*, Respondent placed the following advertisement: "Burmeister Siding - Windows, Siding, Soffits & Facia." As such, Respondent's advertisement offers to provide services in two or more "special skills." See Minn. Stat. § 326.83, subd. 19 (2006).

² Notice and Order for Hearing, at 1.

³ Notice and Order for Hearing, at 3, ¶ 1 and 5, ¶ 10.

5. The allegations contained in the original and amended Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Labor and Industry have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 326.91, and Executive Order 193.⁴

2. Respondent received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondent is in default as a result of his failure, without the ALJ's prior consent, to appear at the scheduled evidentiary conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the original statement of charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the statement of charges, Respondent, by engaging in unlicensed residential building contractor or residential remodeler activities violated Minn. Stat. §§ 326.84, subds. 1 and 1b and 326.91, subds. (1)(5) and (4) (2006).

6. Based upon the facts set forth in the statement of charges, Respondent, defied the February 21, 2003 Consent Cease and Desist Order in violation of Minn. Stat. § 326.91, subds. (1)(5) and 4 (2006).

7. Minn. Stat. § 326.91, subds. (1)(5) and 4 empowers the Commissioner to take disciplinary action against the Respondent, for his violations of agency orders, state statute and state rules.

8. The imposition of a disciplinary action against Respondent is in the public interest.

Based upon these Conclusions, the Administrative Law Judge makes the following:

⁴ See, State of Minnesota Department of Administration Reorganization Order No. 193 (April 4, 2005) ("The responsibilities of the Department of Commerce as set forth in Minnesota Statutes 2004, sections 326.83 through 326.992, and Chapter 327A in relation to Residential Contractors and Remodelers are transferred to the Department of Labor and Industry").

RECOMMENDATION

Based upon these Conclusions, the Administrative Law Judge recommends that disciplinary action be taken against Chris Lee Burmeister, individually, doing business as, Burmeister Siding.

Dated: September 26, 2007.

s/Eric L. Lipman

ERIC L. LIPMAN
Administrative Law Judge

Reported: Digital Recording
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Scott Brener, Commissioner, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155-4307, or call the Department at (651) 284-5005, to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.